



**COMMONWEALTH OF AUSTRALIA**

# **JOINT STANDING COMMITTEE ON TREATIES**

**Reference: Treaties tabled on 25 November 1997**

**CANBERRA**

**Monday, 1 December 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz  
Senator Coonan  
Senator Murphy

Mr Adams  
Mr Bartlett  
Mr Laurie Ferguson  
Mr Hardgrave  
Ms Jeanes  
Mr Tony Smith

For inquiry into and report on:

Treaties tabled on 25 November 1997.

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Present

Mr Taylor (Chairman)

Senator Abetz

Senator Coonan

Senator Murphy

Mr Adams

Mr Bartlett

Mr Laurie Ferguson

Mr Hardgrave

Ms Jeanes

Mr McClelland

Mr Tony Smith

The committee met at 9.11 a.m.

Mr Taylor took the chair

**EMMETT, Mrs Louise Elizabeth, Director, Water Pollution Prevention Section, Environment Protection Group, Environment Australia, 40 Blackall Street, Barton, Australian Capital Territory 2600**

**STEVENS, Dr Helen Christine, Policy Officer, Environment Protection Group, Environment Australia, 40 Blackall Street, Barton, Australian Capital Territory 2600**

**TUCKER, Mr Mark John, Assistant Secretary, Environmentally Sustainable Industry Branch, Environment Protection Group, Environment Australia, GPO Box 787, Canberra, Australian Capital Territory 2601**

**BEASLEY, Mrs Gwyneth, Assistant Director, Environment and Heritage, Department of Defence, Campbell Park Offices, Canberra, Australian Capital Territory 2600**

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**ZANKER, Mr Mark Andrew, Assistant Secretary, International Trade and Environment Law Branch, Office of International Law, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory**

**CHAIRMAN**—I formally declare open this public hearing into the two treaties which were tabled on 25 November: firstly, the 1996 Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter; and, secondly, amendments to the schedule to the International Convention for the Regulation of Whaling.

I welcome our witnesses. We have put everybody together in this first segment. We will call representatives of the Australian Conservation Foundation, Project Jonah, Greenpeace Australia and the World Wide Fund for Nature separately but collectively, so that we might get around it in a reasonable time scale. With each of those, can I suggest that a spokesperson—I understand that you have already arrived at that decision—give a

summary of concerns and indicate briefly what the focus is and what the major concerns about the treaty under consideration might be. In that way we will avoid repetition and optimise our time.

On Monday of next week another hearing has been arranged for Sydney. We will take evidence from Chris Puplick, the Chairman of the National Task Force on Whaling, and from a number of other NGOs who, apart from those who are here today, have an interest in the subject. At that hearing we will also revisit the 1996 Protocol. I now call on spokespersons to make an opening statement.

**Mr Tucker**—Thank you, Mr Chairman. We are here to discuss the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter—the London Convention, 1972—its benefits and obligations, its implementation and effects on business and the outcome of consultations undertaken.

I might briefly start by explaining the London Convention. The London Convention provides an international framework for the effective control of all sources of marine pollution by dumping of wastes or other matter. At present, 77 countries are contracting parties to the London Convention.

The London Convention does not apply to wastes resulting from ships' operations or to vessels that actively fish. These are covered by the International Convention for the Prevention of Pollution by Ships, otherwise known as MARPOL 73/78. Nor does it cover land based marine pollution or waste delivered to the sea at the end of a pipe. These are addressed through the Global Plan of Action for the Protection of Marine Environment from Land Based Activities. Australia's obligations under the Convention are given effect through our domestic legislation, the Environment Protection (Sea Dumping) Act 1981.

The principal issue which we are to talk about is the 1996 Protocol. Australia and 42 other contracting parties adopted the 1996 Protocol to the London Convention at the special meeting of contracting parties in October-November 1996. Australia has now been invited to become a contracting party to the Protocol, which is open for signature until 31 March 1998.

I will now briefly explain the benefits of the Protocol. The benefits of the Protocol are that it will further reduce marine pollution by limiting the types of materials permitted to be dumped at sea to only seven items. It seeks to reduce the amount of and contamination in material dumped at sea. It also incorporates the precautionary approach and promotes the concept of polluter pays. The Protocol also prohibits incineration of waste at sea and the export of wastes or other matter to other countries for dumping or incineration at sea.

I will now briefly explain the obligations under the Protocol. Under the Protocol, only seven materials will be permitted to be dumped at sea. Annex 1 of the Protocol lists

dredged material; sewage sludge; fish waste or materials resulting from industrial fish processing operations; vessels and platforms or other man-made structures at sea; inert inorganic geological material; organic material of natural origin; and bulky items primarily comprising iron, steel, concrete and similarly unarmful materials, for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

Under the Protocol, Australia will be obliged to ensure compliance with guidance on waste assessment. Proponents will be obliged to undertake a waste prevention audit and to formulate alternative waste strategies and Australia is also obliged to develop an action list for the screening of candidate wastes, as required by the Protocol.

Most importantly, the Protocol updates the London Convention to take into account the United Nations Convention on the Law of the Sea 1994, the Rio Declaration on Environment and Development and Agenda 21. The outcome of applying the Protocol will be that less waste and less contaminated waste will be dumped at sea, thus ensuring better protection of Australia's marine environment.

I will now draw your attention to two matters in the Protocol of particular interest to Australia: states and territories of Australia will continue to manage their own marine internal waters and small islands such as Cocos and Christmas Islands, with no practical access to disposal options other than dumping, will be able to continue to dump bulky items. These issues were strongly argued for and won by Australian negotiators.

On implementation, before Australia can ratify the Protocol, it will be necessary to make amendments to the Environment Protection (Sea Dumping) Act 1981. The government intends to bring a bill before the parliament for this purpose. The role of the states and territories in relation to management of marine internal waters will not be altered as a consequence of implementation of the Protocol or by the legislation.

I now briefly turn to the effects on business. Applicants for sea dumping permits are likely to face increased fees under the 1996 Protocol, with a CPI adjustment to compensate for inflation. Application fees are currently \$2,500 for a general permit and \$5,000 for a special permit. As fees have not been adjusted since 1984 when the act first came into operation, the new scale of fees, which is yet to be determined, is likely to be higher than the present scale. Applicants will also face increased costs to carry out a waste audit and formulate alternative waste management strategies.

Let me finalise by informing you of the consultation that has taken place. The Minister for the Environment has consulted with all relevant Commonwealth ministers, informing them of the development and adoption of the Protocol and the preparation to sign and ratify it. The minister has also written directly to state and territory environment ministers and the Protocol has been notified to the states and territories through the



## Schedule of Treaty Action.

New South Wales, Victoria, Tasmania, South Australia, Western Australia, Northern Territory and ACT and Norfolk Island have no objection to the Commonwealth proceeding to sign and ratify the Protocol. Queensland's Minister for the Environment has queried whether the 1996 Protocol would prohibit the construction of artificial reefs using bulky items. The construction of artificial reefs is not considered to be dumping under the 1996 Protocol provided it does not contravene its objectives.

Information has also been provided to affected industry bodies and clients, such as port authorities and permit holders, through personal correspondence; and a media release from Senator Hill is also in train. A letter in support of the Protocol has been received from the Association of Australian Ports and Marine Authorities Incorporated, AAPMA—the peak body for ports in Australia. Individual port authorities—namely, Newcastle, Brisbane, Gladstone, Port Hedland and Fremantle—BHP Transport and CSIRO have also written in support. Greenpeace International, the International Association of Ports and Harbours and the Oil Industry International Exploration and Production Forum have had observers at all relevant meetings of the London Convention where the Protocol has been discussed. We have received no representations against the proposed signature and ratification of the Protocol.

**CHAIRMAN**—Does any other department want to make an opening statement before we go to questions? Nobody. Let me say at the outset that I am delighted, Mr Tucker, you have mentioned the word 'consultation'. As Ian Biggs and one or two other people would know from consistent experience with this committee, we have been consistently critical of the lack of consultation. Although we have moved in the right direction, we have a fair way to go. I am pleased and will be interested to hear from the NGOs as to whether, as they see it, they share your views. What is likely to be the impact between what happens now in terms of dumping and what is likely to happen under this? Is this a real quantum jump or are we going to see an evolutionary thing?

**Mr Tucker**—I will answer that in the first instance and then turn to some of my staff who might be able to answer it in more detail. My understanding is that it will not affect much of what we do now. There will not be much difference. Australia has a fairly good record in this area. I might ask Mrs Emmett to explain the detail.

**Mrs Emmett**—There is a link in the sense that instead of prohibiting materials that may be dumped and requiring special and general permits to be issued the Protocol will limit to only seven items what may be dumped. That restricts the type of material that can be dumped. It will also restrict the contamination in it because Contracting Parties will now have to screen anything that is going to be dumped against an action list. It is becoming far more rigorous. You said, 'Will it be evolutionary?' The Protocol needs to be signed by 26 signatories before it comes into force. Fifteen of those have to be Contracting Parties. That is not likely to happen for two or three years. So we have a

window of opportunity of moving slowly into the Protocol and Australia is already taking some initiatives in that respect.

**Mr HARDGRAVE**—This Protocol seems to rely upon the concept of deliberate disposal at sea. The definition of ‘deliberate’ is always interesting because it could always be in the eyes of the beholder, I suspect. What about the requirement to perhaps retrieve something that is accidentally dumped? Is there a requirement to retrieve things once dumped?

**Mrs Emmett**—There are occasions where ships, for instance, due to some event end up on the bottom of the sea. Sometimes they are raised, but it is quite an unusual event to have to raise something and dump it again—but it is not unheard of.

**Mr HARDGRAVE**—Not necessarily just at sea but perhaps in the coastal waters—something that is dumped, dropped, albeit accidentally, in the eye of the beholder.

**Mr Tucker**—We would have to assess each case on its basis depending on what the material was—if it was toxic or navigationally hazardous, what the practicalities were of retrieving the material and whether you are going to dump it again anyway in some other place. There are no hard and fast rules, as I understand it. We would have to assess each case on its merit and basis.

**Mr HARDGRAVE**—Is this a way around the admirable aims of the Convention to say, ‘It wasn’t deliberately dumped?’

**Mr Tucker**—From your question I gather you are saying that someone is doing something they should not have done and they are claiming that it was an accident.

**Mr HARDGRAVE**—I can say to you that there are a number of allegations levelled from time to time against one or two well-known waste disposal companies in my city of Brisbane—that they dump material down stormwater drains that is essentially toxic and hazardous waste. There are a lot of allegations that I am not going to waste the committee’s time with. I suspect that some of their responses in the past have been that it was an accidental discharge by somebody who did not understand what they were doing and had not appreciated the implications of it. They said, ‘It is not company policy to deliberately dump this down a stormwater drain. It was accidentally discharged.’ I am simply playing devil’s advocate, being cynical and asking the question if this is a way around this Protocol.

**Mr Tucker**—If we had a circumstance where there was a company—and this Protocol does not deal with things like stormwater outlets—which hired a vessel to take some material out and accidentally dumped it, it is like any case where we believe someone may have broken the law. We would have to make investigations to establish whether it was deliberate, accidental or whatever and take the necessary legal proceedings

if we believed so.

**Mr HARDGRAVE**—But you are satisfied that within this Protocol there is sufficient weight to ensure there is an enforcement of that law?

**Mr Tucker**—The test will be what effect we give it in our domestic legislation. We can put more in our domestic legislation than is in the Protocol if we so wish. But clearly, we would have to put aspects in our domestic legislation that related to potential breaches.

**Mr McCLELLAND**—How easy is it for companies to dump? For instance, you mentioned general and special permits. I think it is \$5,000 for a special permit. Is that an ongoing permit or for one dumping event?

**Mr Tucker**—It can be a range. We have issued permits for single instances. We can also issue permits for several years under our current legislation. It is up to the permit issuing authority to determine the basis for the permit.

**Mr McCLELLAND**—Are there any companies that do have a permanent permit or one over a period of years?

**Mrs Emmett**—There are a number of places now that have permits for two or three years. In fact, we have actively gone in the direction of long-term permits for people that have projects that need certainty.

**Mr McCLELLAND**—What sort of thing would they be dumping?

**Mrs Emmett**—They would be dumping fairly clean sands on the North West Shelf with respect to a project dealing with the export of LNG and they need certainty that they can continue it.

**Mr Tucker**—To get that sort of permit they also have to have a very structured and rigorous monitoring program in place. We specify that.

**Senator MURPHY**—Can I ask about the national interest analysis? On page 3 there are seven dot points. It says:

. . . bulky items primarily comprising iron, steel, concrete and similarly unarmful materials . . .

In the second paragraph underneath all of that it says:

A number of materials which have been licensed for sea dumping in the past (eg munitions, car tyres, concrete, asbestos and industrial waste) may not be dumped under the Protocol. . .

I just wanted to know whether they can be dumped or not.

**Mr Tucker**—I see what you mean. The seventh dot point relates to small islands which essentially have no other capacity. For example, they do not have capacity for a landfill. So, for example in relation to small islands, concrete can be dumped, but in general in other parts of Australia we are not permitted to dump concrete under the Protocol.

**Senator MURPHY**—Would it not be better if you explained that a little bit?

**Mr Tucker**—Yes. I can see the potential for confusion.

**Dr Stevens**—This is exactly taken from the text of the Protocol and we cannot really move that text. We could explain it better.

**Senator MURPHY**—Can I go back to a follow-up question with regard to what Mr McClelland was asking you about those permits? You said they were either for specific items or for periods of time. Is the price the same?

**Mrs Emmett**—The fees are set at the moment at \$2,500 for a general permit and \$5,000 for a special permit and we will be looking into those, because they have not been adjusted since 1984. So we will be actively looking into those.

**Senator MURPHY**—You will be looking at them real hard.

**Mrs Emmett**—We will.

**Mr Tucker**—They are actually set by the legislation, so we have to change the regulations to the act.

**Senator MURPHY**—Why are they not based on a tonnage or weight based fee?

**Mr Tucker**—That is one of things that we will certainly be looking at and revising the charges. I do not know what the basis was for the setting of costs 13 years ago.

**Senator MURPHY**—I come along and say that I have 10 kilos or 10 tonnes of whatever and, provided it is permitted to be dumped, I pay \$2,500. What is a special permit for?

**Mrs Emmett**—A special permit is when you need to take special arrangements, perhaps even special monitoring arrangements—if there is slight contamination in the sediments, for instance.

**Senator MURPHY**—Who pays for that?

**Mrs Emmett**—It is the applicant who pays the \$5,000.

**Senator MURPHY**—Yes, but who pays for the ongoing monitoring?

**Mrs Emmett**—The applicant.

**Senator MURPHY**—And who does it?

**Mrs Emmett**—The applicant arranges it and reports to us. We check it.

**Senator MURPHY**—You check it?

**Mrs Emmett**—Yes.

**Mr Tucker**—In our permits we can specify the monitoring that is required and the reporting requirements that will come to us. We can be quite detailed and specific, and we are in many of our permits.

**Senator MURPHY**—There has been a lot of criticism over time now about things being dumped and the lack of monitoring, et cetera with regard to this permit system. The monitoring and recording is that you get a land base filling out a report, nobody has really done any monitoring, it gets sent to whoever, it gets filed in file 13 and nobody really wants to know about it because it could be a costly exercise.

**Mr Tucker**—I do not think that has been our experience in the past. We do not actually issue a lot of permits. There are other things that might occur in state controlled waters, which are the state internal waters like bays and so on, which we have no jurisdiction or involvement in. Most of our permits are for port authorities who want to dredge ports and then dump the spoil out to sea. From our view, we have fairly sophisticated monitoring arrangements with those port authorities. It is also in their interests that they have good monitoring, firstly, because they have to continue to apply to us for permits and, secondly, because of the likely public adverse reaction if there were things found which were not in the interests of the protection of the marine environment.

**Senator MURPHY**—Do you know how many special permits you have outside of port authorities for dredging activities?

**Mr Tucker**—We have none at this stage.

**Mrs Emmett**—We did have one with Pasminco which ceased on 29 October.

**Senator MURPHY**—I know it expired; that is the only reason I did not ask you about it. Why is it the case that the Commonwealth would not seek an agreement with the states? Just because you dump it within the state controlled waters, I would have thought

we would have been better to have at least some common approach with regard to what we permit to be dumped. At the end of the day, there is not a fence there that stops it from spreading elsewhere.

**Mr Tucker**—We have had similar discussions ourselves. With the Protocol coming into force, as Mrs Emmett has said, in a couple of years time, I think partly what is required of us now is to enter into discussions with the states. The minister has already informed his state colleagues of the Protocol and its meaning. We have had reply from them that they are happy with the Protocol. We have to make sure that it is not only the Commonwealth giving effect to those commitments but also the states. Clearly one of the activities we will have to enter into between now and change of legislation is clear understanding with our state colleagues what is and what is not to be dumped.

**Senator MURPHY**—Why is concrete not allowed to be dumped?

**Mrs Emmett**—It is a bulky item. We had to fight very hard to keep item 7 on this list—the bulky items for small islands. Generally speaking, they want to stop the dumping of bulky items such as big steel items, big concrete items and things like that. Australia was faced with a situation where, if we could not keep this clause in, we could not sign the whole thing, because we cannot just have a small exemption.

**Senator MURPHY**—I thought there may have been some other reason.

**Mrs Emmett**—No. Generally speaking, they do not want to dump the concrete.

**Mr Tucker**—Mr Chairman, if it will help the committee, we can provide the committee with a copy of some existing permits.

**CHAIRMAN**—Fine.

**Mr TONY SMITH**—What is meant by ‘waste or other matter incidental to or derived from the normal operation of vessels’? What was envisaged by that?

**Mrs Emmett**—It is waste coming from the operations of ships. The authority I have here is Mr Paul Nelson from AMSA who might be able to fill in the detail for you.

**Mr Nelson**—Operational waste from ships is oily washings from oil tankers, sludge and that sort of thing. Ships are allowed to discharge operational waste, providing they meet strict requirements—for instance, oil may be discharged at sea provided it is discharged at a rate of no more than 15 parts per million oil in water. Certain types of garbage can be disposed of, providing it is more than 12 miles from the nearest land. There are those sorts of things. But that is all operational waste generated on board the ship and is not covered by this particular instrument. The ship is a separate treaty.

**Mr TONY SMITH**—You can have quite a bit of rubbish in a bilge which can make an awful mess, and that does not seem to be picked up then either. Arguably that is not picked up.

**Mr Nelson**—No. As I said, it is a separate treaty. It is a very comprehensive and technical treaty that deals with where oil can be discharged and the circumstances in which it can be discharged. As I said, generally 15 parts per million—oil in water—is the only permissible discharge at sea.

**Ms JEANES**—We have a number of artificial reefs in South Australia made from car tyres. I see that car tyres are now prohibited. How will that affect state or territory governments if, as part of their coastal management regimes, they want to build perhaps another similar reef? Would they be able to?

**Mr Tucker**—This is one of the areas where we have to do some further policy work. The Convention specifies what cannot be dumped and says that you can dump anything provided it does not breach the objectives of the Convention. With car tyres, I think our view at the moment is that we are not that keen on car tyre reefs. But the question is, ‘Are car tyre reefs directly contravening the objectives of what you are trying to achieve in the Convention?’ I do not think the answer to that question is particularly clear at the moment, because there are other reefs which certainly are being built around the world now with specially made material specifically for the construction of artificial reefs which probably you could easily say are not pollution of the marine environment; they are inert substances. We have to investigate how that should be regulated and what the policy parameters and tests would be for the construction of artificial reefs in the future. That is something that will begin quite shortly.

**Ms JEANES**—And those investigations will include talking to the states and territories?

**Mr Tucker**—Absolutely.

**Mr HARDGRAVE**—I have two questions. The first one leads on from that. There are items that are currently dumped which would be within the gamut of this Protocol as prohibited in the future. Are there things that are in our oceans in and around Australian territorial waters that we really should be concerned about to the point of making some remedial steps, or is that now a multi-squillion dollar question?

**Mr Tucker**—Your last point could be right for certainly some of them. Have we dumped munitions in the past?

**Mrs Emmett**—Yes, we have. Munitions have been dumped.

**Mr HARDGRAVE**—So we have munitions out there. What about off our tourist island resorts? Are we finding concrete and umpteen other things being dropped? Would

they continue to be dropped as a result of this Protocol? I am thinking about places around the Great Barrier Reef, for instance. Do we know of anything?

**Mrs Emmett**—I am not aware of any. But it certainly would be prohibited under the Protocol.

**Mr HARDGRAVE**—It would be, yet they would be a small island by definition.

**Mrs Emmett**—But they are not in a situation where they do not have any other option. Cocos and Christmas are because, if they actually dig in and try to bury things by land disposal, they actually will invade their precious water supply. That is why they cannot do landfill. That is why they have been allowed to continue to dump. But our islands off the Great Barrier Reef are not in that situation. There are other options which they will be asked to look into.

**Mr HARDGRAVE**—And you are certain that all of them are in that particular category in that place?

**Mrs Emmett**—They are certainly not in a situation where they are remote and they do not have any other options.

**Mr HARDGRAVE**—So the islands in Australia's context that you are talking about are Norfolk, Cocos, Christmas—

**Mrs Emmett**—Yes.

**Mr HARDGRAVE**—But every other island is okay and should have an alternative means of disposal?

**Mrs Emmett**—They certainly are closer to the mainland and the economic cost of looking at other alternatives should be at least feasible. Again, we would have to approach it on a case by case basis.

**Mr HARDGRAVE**—And you would add Lord Howe Island, I suppose, to the wish list—the list of being away from the coast?

**Mr Tucker**—There are other considerations that have to be taken into account. With Lord Howe being a world heritage area, you would have to see whether your activity that you want to take potentially could detract from the world heritage values for which it got nominated.

**Mr HARDGRAVE**—I am just thinking about the countless islands scattered in the Torres Strait, such as the Thursday and Friday islands and those sorts of places and what we are talking about there. Do they have an alternate means of disposal?



**Mr Tucker**—Some of those larger islands certainly could, but we will have to make the judgment about whether it is practical and feasible, for example, for some waste to be returned to the mainland. The minister has said that, even with the Cocos (Keeling) Islands, his preference would be not to dump any of those goods at sea and he would like to think that we could investigate ways of either returning the waste to the mainland or different processing methods.

**Mr HARDGRAVE**—It occurs that there is probably a follow-on question seeing that I have raised the Torres Strait Islands, and that is: has the consultation included traditional landowners in the process of trying to understand their needs, demands, what they have perhaps developed as habits and explaining the Protocol to them. Have you done all of that in the consultation process?

**Mrs Emmett**—We have had public consultations in April and May in three states and we did send the Protocol out to a long list of people. We had those consultations in Sydney, Townsville and Perth. They were open and we discussed the sea dumping guidelines which are guidelines to assist all of the applicants to implement the Protocol.

**Mr HARDGRAVE**—Have you also spoken to those people? I am thinking of island communities off the Queensland coast. I am thinking of people such as the Palm Island community off Townsville, Thursday Island and the Murray Islanders as well. All of those sorts of people perhaps may have needed some absolute consultation and explanation, and there is nothing specific being targeted at them, I take it?

**Mr Tucker**—It has not been practical for us in the time frame leading up to the government making the decision on whether it wishes to accede to the Protocol. But it is quite clear that, as we are preparing for it to come into force, we will need to develop measures whereby remote communities are informed.

**Senator ABETZ**—If I could follow on from Mr Tucker's answer to Ms Jeanes where you talked about the objectives of the Protocol, whereabouts do we find the objectives of Protocol? If I am right, page 19 of our papers tells us 'from all sources of pollution'. That can mean a whole range of things. Pollution is basically something foreign introduced into the environment which is not usually there. In that case, the establishment of reefs could be considered by some as polluting the environment, no matter what they are made of.

**Mr Tucker**—As I said we have to investigate this further. Pollution is defined just above article 2. It is principally as you have stated it. There certainly are artificial reefs which can be made of substances where those substances do not pass foreign material out into the marine waters. There are also benefits that some would see in the creation of artificial reefs in terms of increased fish habitat, potential extra tourism attractions, fishing spots and so on. Our view would be that, clearly if there were materials in the future which you could identify as putting pollutants into the water, whether they were artificial

reefs or not, we would not look upon those favourably.

**Senator ABETZ**—Who ultimately will make the determination? Who will be called upon to determine whether a reef is in breach of the objective?

**Mr Tucker**—Again, that is an interesting question, because most artificial reefs are presently created in state waters. We currently regulate them through our Commonwealth legislation, although I believe that some states probably could regulate through their own current legislative frameworks.

**Senator ABETZ**—If I might say so with respect, the Queensland Minister for the Environment has queried the matter with you and you have given him an assurance that it is all okay in general terms, with a slight caveat. Then, if we have an interpretation in 20 years time, as we have had with other Conventions—which seem to be interpretations that were not necessarily in the minds of people when they were drafted—we could come into some problem areas. I want to know how we can tie this down a bit firmer.

**Mr Tucker**—Other nations who are signatories to the Convention also create artificial reefs. It is not just Australia that does do it.

**Senator MURPHY**—The Protocols are not retrospective.

**Senator ABETZ**—But that is not the issue. As I understand it, the Queensland minister asked whether it would prohibit the construction of artificial reefs. I would think the construction is not retrospective action; it is action some time in the future. That is what I am inquiring about.

**Mr Tucker**—The answer to the minister's question is that it will not prevent construction of artificial reefs provided they are not dumping.

**Senator ABETZ**—It does not contravene the objectives but we do not know exactly what that means.

**Mr Tucker**—We do not know what that means. We have to develop our own position in Australia as to how we interpret that and it has to be consistent with the Protocol. We are in the process of beginning that exercise.

**Senator ABETZ**—What happens in the international community if we determine a definition which is seen as being inconsistent with the international interpretation? Who makes that determination on the international scene?

**Mr Tucker**—It is a bit hypothetical. We would hope we would make a definition that was not inconsistent.

**Senator ABETZ**—Yes. But, if we do, who ultimately is the arbiter?

**Mrs Emmett**—Internationally, the IMO is the arbiter on the Protocol. But with every treaty it depends on what actually happens in national legislation. So we come back to the point that we need to discuss the policy in the future about what will happen on artificial reefs. We have an international treaty and that is interpreting into national legislation. So there is an interpretation which is then put into legislation.

**Senator ABETZ**—Yes, but I think Australia's experience has been that we have signed up to conventions believing that we were on all fours with our domestic legislation with a convention only to be told 10 or 20 years down the track that in fact we are not. Given, with respect, the degree of cringe factor about international determinations, we then might be in a situation in a decade or so where we have to change our legislation and activities that we thought were in order but are found to no longer be in order. I am wondering whether we can tighten that up so we can in fact ensure that we have learnt from some of our experiences in the past and not leave too many vagaries around the edges.

**Mr Tucker**—I take your point. I think what we would do to try to make sure we covered those things is that when we got to what our view was on the creation of artificial reefs it would be wise to sound out at least the IMO on where we are going, plus other nations. Other nations clearly are also going to create artificial reefs.

**Senator ABETZ**—Can we do that straightaway so we can get some indication prior to the federal government legislating and doing things?

**Mr Tucker**—Yes.

**Senator ABETZ**—We have been told there has been a lot of consultation. Coming from the state of Tasmania, I am conscious of the electrolytic zinc company that does a bit of offshore dumping. How will they be affected? I know they are working very hard to try to arrange things so they no longer have to.

**Mr Tucker**—They ceased dumping on 29 October and will never resume. They have written to us handing back their permit.

**Senator ABETZ**—They are happy with that?

**Mr Tucker**—They are quite happy with it. We are quite happy with it.

**Senator ABETZ**—Who are the 77 contracting parties? Does it include countries like Poland, or not?

**Mr Tucker**—We could provide you with a list.

**Senator ABETZ**—If you could that would be helpful.

**Mrs Emmett**—Poland is a contracting party and they are quite vocal in the IMO.

**Senator ABETZ**—Good to see. I am sure their navy does not dump at sea. If we could have a list, in any event, of those 77 countries that would be helpful. What is the definition of sewage sludge? Can it be raw sewage or does it have to be some form of treated sewage?

**Mrs Emmett**—The IMO is currently developing specific guidance for each of the seven items on that list. The definition, although it does not appear specifically in the Protocol, will be defined and elaborated in that specific guidance.

**Senator ABETZ**—When will that be ready?

**Mrs Emmett**—They are being developed as we speak. For instance, Australia has developed draft specific guidance on bulky items. Specific guidance has also been developed on geological items and on fish waste. Specific guidance is now being developed on the other four items by different countries.

**Senator ABETZ**—When would they be ready?

**Mrs Emmett**—The drafts of the other four are going to be looked at at the Scientific Group meeting which will be held in April. Then they move to the Consultative Meeting where they are agreed. It will take 18 months to two years for specific guidance.

**Senator ABETZ**—Shouldn't we have all that information before we, as a country, sign up? We might sign up to sewage sludge believing one thing only to have a working party defining it in a way that we never thought possible, but we are stuck having signed the Convention on the Protocol. Shouldn't all that information and definitional work have been done prior to the request for our signature, which I think opens March next year?

**Mrs Emmett**—No. It is open until March to sign.

**Senator ABETZ**—Which makes the point, I suppose, even stronger. We want to be good international citizens, we want to sign up but we will not know for 18 months to two years what we are signing up to because we do not know what sewage sludge means, for example.

**Mrs Emmett**—Under article 24 there are various ways of joining up with this Protocol. One is to sign not subject to ratification. One is to sign subject to ratification. The other one is to accede. What Australia is intending to do is sign subject to ratification. It is open for signature until 31 March, but we cannot ratify until the legislation is put through. We have to go through a lot of domestic procedures before it is ratified.

**Senator ABETZ**—More importantly, we should not be ratifying until we know all the definitions that are being developed.

**Mr Tucker**—That is quite achievable.

**Senator ABETZ**—What do you mean ‘That is quite achievable’?

**Mr Tucker**—If the government so decides that it does not want to ratify until those definitions are there, then the government can decide that.

**Senator ABETZ**—Wouldn’t it make good commonsense for us as a country not to ratify until we know the exact definitions?

**Mrs Emmett**—We do not dump sewage sludge. Other countries do, but we do not.

**Senator ABETZ**—How can you say that until you know exactly what the definition of sewage sludge is?

**Mr Tucker**—We dump nothing that comes out of human waste through sewers. It is not dumped in our waters through shipping. Coming off land base is not covered by this Convention. Stormwater outlets and sewage pipe outlets are not covered by this Convention. It would only be something that would be physically taken by a vessel out to sea and dumped.

**Mrs Emmett**—And we do not do that.

**Senator ABETZ**—So if you dump it via a boat it is potentially sewage sludge. If you do not use a boat but pump it out to sea through a long pipe, that is not sewage sludge.

**Mr Tucker**—No. It is not covered by this Convention; it is covered by another instrument.

**Senator ABETZ**—Given that you are dumping usually from land and not by boat because you start off on the landmass and keep filling out to a certain extent, does that therefore mean that man-made reefs, if they are started to be built from the shore, are not dumping?

**Dr Stevens**—It would not come under the Convention.

**Mr Tucker**—Most artificial reefs are not built like that; they are actually built out.

**Senator COONAN**—Is concrete in or out? It seems that there is a bit of confusion on page 7. We have bulky items in, namely, concrete. Then at about point 5 on the page we have a number of materials which have been licensed in the past that may not be dumped.

**Mr Tucker**—Concrete is in for remote island communities. But for the rest of Australia it is out. It is not explained there clearly. We will attempt to revise that.

**Senator COONAN**—The other thing I wanted to explore with you very briefly was at point 9 on page 7 of the Protocol where it talks about incorporating a precautionary approach, which is fine, whereby appropriate preventative measures are taken. What I was really interested to know is: how will things such as the waste prevention audit, waste management options and whatever be supervised or enforced? Who is doing the assessing and will proponents really be responsible for self-assessment? How does the process work?

**Mr Tucker**—It is yet to be determined because we have not done these things to date. Certainly with the way we administer our current permits, we are going to put certain conditions in the permits that they are to meet. For example, they might have to clean something to a certain standard. We will go and check to make sure that has been met. We will either send one of our officers or we will employ somebody else to check that for us and make sure it has been done.

**Senator COONAN**—Are there enough people to go and have a look at what Christmas Island might want to dump at sea? How does this actually work in practice?

**Mr Tucker**—We can have other people do it for us on Christmas Island.

**Mrs Emmett**—We have an environment officer stationed there and they supervise any dumping that occurs. They do check.

**Senator COONAN**—Do they have the necessary expertise? With some of the criteria you would presumably need to have some specific knowledge about what would be appropriate in the audit process at least to see what you might need to clean off or take out.

**Mr Tucker**—Audits will probably come to us centrally. We would probably require them to do a draft audit and submit it to us. Then we would look at it, check it and probably consult with appropriate experts and certainly other government departments who have an interest in areas of expertise. We would go back to them with our views on that draft and then subsequently have it finalised, put into practice and have some sort of checking mechanism.

**Senator COONAN**—The short answer to my question is that you are in the course

of developing some procedures that will allow you to have some input into the assessment process. Is that correct?

**Mr Tucker**—That is quite correct. We will have to develop procedures. The Convention before has not required these measures. They are required now. We have to come up with an administrative system to make sure that they are met completely and to the letter of what we are trying to achieve.

**Senator COONAN**—Also you have said at page 9 that you really do not have any idea how much this might all cost. I suppose you have to know what the procedures will be before you can formulate costings.

**Mr Tucker**—We have commissioned some preliminary work to give us some idea of what the ballpark might be, but I suspect we probably will not really know until we actually do one.

**Mr LAURIE FERGUSON**—When you say that we do not allow sewage sludge, does that mean that someone cannot seek a permit, or is it banned by law in Australia? What do you mean by ‘we do not do it’?

**Mrs Emmett**—The applicants would have to contact our office and seek a permit if they wished to dump sewerage sludge that is deliberately loaded onto a ship to be disposed of at sea. If they did, we would not agree. We would not issue such a permit.

**Mr LAURIE FERGUSON**—Even though it is allowed?

**Mrs Emmett**—No, it will not be.

**Mr Tucker**—Under the Protocol it will be allowed. Under current circumstances, it is possible that a permit can be issued, but we do not do it.

**Mrs Emmett**—It is allowed under permit. Let me correct that. Sewage sludge is dumped, but it will be done with a permit and under specific conditions. The point we made is that Australia does not actively deliberately load on a ship and dispose of sewage waste at this time, but it is allowed.

**Mr Tucker**—The economics determine that for us. Why would you put it on a vessel and incur these costs when there are other much cheaper processing methods already?

**Mr LAURIE FERGUSON**—I do not know why. The other point was raised in Senator Abetz’s concerns and I would be equally worried that there is too much liberality in allowing countries to determine individually what dumping is—such as West African countries without any public services where people are being paid a year later. I would be

more concerned that there is a lack of discussion on that front internationally before people sign up to these.

**Mrs Emmett**—Under article 1 there is a definition of dumping and what dumping does not include. Would you like me to go through that with you?

**Mr LAURIE FERGUSON**—Not really. We have spent quite a bit of time here today theorising about whether tyres are dumped. That obviously leads me to a possible thought that a country like Liberia might start arguing about what dumping is. That is a concern.

**Mr Tucker**—I think it is quite possible in the future. It would not surprise me that some of those issues actually come up in the IMO in the next five years or so.

**Mr LAURIE FERGUSON**—The other point I am not quite on top of concerns the 77 countries. There seem to be quite a few missing. Do I have to get a permit within the country of origin or can I contract to Liberia or wherever to get a permit there? How does this work? I am not too clear on it.

**Mr Tucker**—I am not sure.

**ACTING CHAIR (Mr McClelland)**—At the outset in your discussion you said that the treaty prevented companies dumping through another country.

**Mr Tucker**—That is right.

**Senator MURPHY**—I want to ask about the definition of ‘sea’? I thought I understood you to say earlier that you still have to negotiate with the states about state controlled waters. Yet the definition of ‘sea’ seems as though it covers everything from the shoreline out.

**Mrs Emmett**—Our legislation does start from the low water mark, but it does not cover waters internal to a state.

**Senator MURPHY**—Out to 12 nautical miles. State waters are 12 nautical miles.

**Mrs Emmett**—Three nautical miles.

**Mr Tucker**—There are different definitions, interpretations and descriptions in our legislation and in this. For this particular piece of legislation that we have it operates from the low water mark out. It does not operate on what are called state internal waters which are closing bays, estuaries and so on.

**Senator MURPHY**—With regard to the question that was raised about the



establishment of reefs, if, say, a state or a country may need to take some action to protect shorelines or channels or some other part of their waterway with the introduction of either artificial reefs or levy banks which can run out to sea for quite a way, how does that cover that? Do we need to cover that?

**Mr Tucker**—If it is construction from the shoreline then they are not covered by this Protocol or Convention. Again, it comes back to what is the spirit of the Convention and what it is trying to achieve.

**Senator MURPHY**—I understand that—with regard to dumping.

**ACTING CHAIR**—The states have their own obligations, from Australia's point of view, under the treaty. It was negotiated as a federal package.

**Mr Tucker**—That is correct.

**Mr ADAMS**—In relation to other countries' fishing boats or boats that may jettison waste that is washed up on our shore, what does the Protocol say about that, if we can prove this came from another country?

**Mr Tucker**—If we knew who it was and could prove that a vessel in Australian waters deliberately dumped material against our domestic legislation, then we could take action against them. The problem with all those things is trying to identify who it was, whether it was deliberate, whether it occurred in our waters.

**Mr ADAMS**—What if it came from another shore?

**Mrs Emmett**—Then it is not deliberate disposal at sea.

**Mr ADAMS**—I just read here that Norfolk Island still pushes it off into the sea. Let us hope they stop doing that soon. If another country let that happen and they pushed it into the sea and it flooded another part of our shore, the Protocol does not cover that. Hopefully, the next round might get to that.

**Mr Tucker**—Either that or there may be some other mechanisms. I am not familiar with all aspects of the law of the sea but there may be some dimensions in that.

**Mr ADAMS**—But off the boat it has to be within our 200 miles, does it? If we can prove it is off a ship of some description and it is within our waters, we can use our own laws.

**Mr Zanker**—I want to make some comments on some of the points that have been made just for the assistance of the committee. As was pointed out earlier, the existing London Convention which the Protocol will replace is given effect to by the

Environment Protection (Sea Dumping) Act 1981. It applies in relation to the territorial waters, the exclusive economic zone and above the area of the continental shelf. The map basically shows the area where the thing applies.

**ACTING CHAIR**—What are you referring to?

**Mr Zanker**—Certainly, the Environment Protection (Sea Dumping) Act applies in relation to the Australian exclusive economic zone and the area of the continental shelf beyond the Australian Exclusive Economic Zone, not including areas adjacent to the Australian Antarctic Territory. In this case, we would say that it would apply. Perhaps we could have the map reproduced in *Hansard*.

**ACTING CHAIR**—That would be handy.

**Mr Zanker**—Okay. I think it might have been said that the act needed to be changed to change the fee regime. That is not strictly true. Section 40 of the act provides for regulations to prescribe the fees in respect of applications for permits.

If I can just revisit that issue about deliberate disposal, deliberate is a colourful phrase, but the way in which the Convention is implemented in Australian law—and I would imagine the Protocol will be likewise—is to create a range of offences which prohibit the dumping of any material into the sea and then provide for specific defences. I refer you to section 15 of the act. It says:

It is a defence to a charge of an offence . . . if the person proves that—

- (a) the dumping the subject of the charge was necessary to secure the safety of human life, or of a vessel, aircraft or platform at sea, in case of a *force majeure* caused by stress of weather; or
- (b) the dumping the subject of the charge appeared to be the only way of averting a threat to human life, or to the safety of a vessel . . .
- (c) the dumping was conducted so as to minimise the likelihood of damage to human or marine life; and
- (d) a report of the dumping, setting out the prescribed information, was furnished to the Minister as soon as practicable after the occurrence of the dumping.

So some alleged accidental disposal of material at sea would have to be reported to the minister. That is the way that works. It reflects the provisions of the Convention because it does say that dumping can take place if there is some circumstance where human life is likely to be threatened—if it does not actually occur.

The other point I wanted to come to was this business about artificial reefs and dumping. It is a complicated question. In implementing the Protocol, we will have to be careful in drafting the bill to make sure that various considerations that have been referred to by others are carefully taken into account.

In the actual Protocol, article 1 paragraph 4.2.2, states that:

'Dumping' does not include:

placement of matter for a purpose other than the mere disposal thereof, provided such a placement is not contrary to the aims of this Protocol;

I suppose in the case of an artificial reef that was constructed from old railway carriages, which I understand have sometimes been used for purposes like this, it would be contrary to the aims of the Protocol to dump them if hazardous materials like mercury or other heavy metals would continue in the environment for a long time and potentially pose a health threat.

Similarly, if the materials used for the construction of the reef were dumped into shipping lanes where they presented a hazard to navigation, that would also be contrary to the aims of the Convention. That is one of the things that generally should not be done. The real issue will be actually getting all these matters right when preparing the relevant legislation to amend the Environment Protection (Sea Dumping) Act. That would be done having regard to things like what the International Maritime Organisation would regard as sewage sludge, for example, to come back to that one.

**ACTING CHAIR**—Thanks very much for those points and thanks very much for everyone coming along.

[10.11 a.m.]

**EISER, Ms Pamela Joy, Member, Australian Marine Conservation Society, PO Box 3139, Yeronga, Queensland 4810**

**HORSTMAN, Mr Mark, Research Coordinator, Australian Conservation Foundation, 340 Gore Street, Fitzroy, Victoria 3065**

**McRAE, Mr Simon, Campaigner, Ocean Dumping, Greenpeace, PO Box 3307, Sydney, New South Wales 2001**

**MOORE, Ms Margaret Ann, Senior Conservation Officer, World Wide Fund for Nature, 21 Church Street, Hawthorn, Victoria 3122**

**ACTING CHAIR**—I now call representatives of the Australian Conservation Foundation, Project Jonah, Greenpeace Australia and the Worldwide Fund for Nature. We are locked in here for a quorum so unless people can go beyond 12.30 we had better bear that in mind when considering how to pace the questions. We have received submissions, but is someone able to present a summary of a combined position or do you have respective positions?

**Mr McRae**—I was actually going to do a run through.

**ACTING CHAIR**—That would be terrific. I should ask you to keep it brief, not because we do not want to hear from you, but I fear that we are going to lose our quorum as either the House or the Senate kicks off. We have also got an important whaling treaty after this which we want to get through this morning. We might ask questions and you can tidy up anything that we leave off. I will come back to you for any tidying up. How is that?

**Mr Horstman**—That is certainly the way we prepared. Mr McRae can speak on our behalf with an opening statement and we can follow up.

**ACTING CHAIR**—Fire away, Mr McRae.

**Mr McRae**—First of all, we all welcome the fact that Australia is going to sign the 1996 Protocol. Obviously, it is a move forward as far as we are concerned because the emphasis has now changed from the polluter not having to be under the spotlight, which was the case under the previous regime where there was only a black list. The whole concept now applies a polluter pays principle: if you cause a problem, you are responsible for it. There is also the adoption of the precautionary principle, that is, if you are in doubt about its harmfulness, do not dump it. We are firmly behind those kinds of principles and they are firmly entrenched, of course, in the 1996 Protocol.

I will now provide a brief overview or make some points up front about why we think the Protocol is important. Everyone here will be fully aware that we have a very poor understanding of the marine environment. The marine environment itself is incredibly interconnected and things that we do in parts of the marine environment can have significant impacts on other parts. The global commons or the marine environment is something that all of us are involved in, that all of us are a part of, and we have got to think of future generations when we think about dumping. The attitude in the past which said 'We do not really give a stuff as long as nothing happens to us,' is one that seems to be disappearing. There is a whole new approach of, 'Okay, if there is a problem, we are not going to dump it.' That is essentially what we totally agree with.

I also note that in relation to the oceans policy, which is up for debate next year, there are some policy initiatives which we would feel very strongly about putting forward for that oceans policy in terms of sea dumping, and that is the application of the precautionary principle; the application of polluter pays—if you pollute, you pay for the damage—and, more importantly in terms of future aspects, clean production principles. They would include the minimisation of waste, the encouragement of recycling and reuse of resources wherever possible and support of zero discharge or a target of zero discharges. I think targets can be quite useful in measuring your performance.

**Mr ADAMS**—Sorry, I did not quite hear that last point.

**Mr McRae**—Using targets as a way of measuring your performance instead of being really vague about—

**Mr ADAMS**—Benchmarking.

**Mr McRae**—Benchmarking, yes, because then it is hard to measure how far you have advanced. As I said initially, we welcome Australia's move to sign the Protocol. Obviously we would like to see Australia then move to ratify the Protocol as quickly as possible and would urge them to ratify it before March 1999, which is the time which a review will be done by the Commission on Sustainable Development on ocean issues. So we are hoping that Australia will be able to fulfil their obligations and ratify that Protocol before that deadline.

We welcome the announcement of course that industrial waste dumping is being stopped, or that Pasminco has now stopped dumping. We note that in 1993 the world had agreed at the previous London Convention meeting that they would stop industrial waste dumping. However, Australia saw fit to continue for a number of years afterwards. Obviously that was quite embarrassing for Australia. We think it is good that Australia has finally caught up with the rest of the world and stopped what is a fairly antiquated practice and not really relevant in the 21st century in terms of marine management.

I now want to basically go into the annexes of the Convention. I do not really want

to go over the Protocol at all. I think the basic thrust of it is what we are really interested in. The details of the annexes are on the back and the reverse list. In particular, in relation to the item of bulky items which was amended because Australia wanted to continue dumping off the Christmas and Cocos islands, whilst we recognise there are difficulties in dumping off those islands and we also acknowledge that Australia has undergone waste minimisation strategies for those islands which we are very encouraged by, and obviously that is moving in the step of minimising the waste that has built up over decades of neglect, we also would just like to say at this stage that the original definition put forward by Australia, we believe, could have created a serious loophole in the fact that the bulky items were not clearly defined under Australia's original proposal. We saw that as being a potential loophole for a number of wastes to be dumped off those islands and we did not think that was done in good faith. But we appreciate the fact that that was amended and Australia agreed to that amendment—that the bulky items would be primarily comprising iron, steel, concrete and similarly unharmed materials.

We also seek Australia's assurances that they will not expand this exemption for Christmas and Cocos islands to other island states. We have already had one case of a special exemption for Pasmenco. We do not want another case of another special exemption popping up along the way. We think that if you are going to have a global agreement, it is going to be globally binding and you are going to have good outcomes then everyone has to agree to it.

I have covered waste minimisation. Obviously we encourage any waste minimisation programs that are undergoing at Cocos and Keeling islands. We would encourage more resources to be put into the implementation of those strategies and the encouragement of recycling wherever possible. We note that in some cases steel may be recycled from old car bodies that are left on Christmas Island. There are various other materials which previously would have been dumped which we can recover the resources from. We obviously think that is a much better option than dumping.

In relation to paragraph 3 of annex 1 of the Convention, there is reference there to the International Atomic Energy Agency expecting to define de minimis levels for concentrations of radioactivity for the contracting parties to adopt in relation to the dumping of radioactive waste. In this matter, the issue of de minimis levels of radioactivity, which is still under discussion, should not under any circumstances undermine the prohibition on the dumping of radioactive waste at sea.

Obviously, the issue of dumping radioactive waste at sea and radioactive waste contamination at sea is an issue of worldwide concern and something which Australians are very familiar with as a result of nuclear testing in the South Pacific. We would not be encouraging the Australian government in any way to look at approving the dumping of radioactive waste no matter what level it is at.

We were disappointed that during the last convention meeting, in November last

year, when Greenpeace International brought photographic evidence forward that the French navy in French Polynesia had been illegally dumping radioactive waste, and this was seen as being in breach of the Convention, Australia remained surprisingly silent at that stage.

As for the 25-year review of radioactive waste which is also mentioned in paragraph 3 of annex 1, we would expect Australia to be vigilant in connection with this review. We expect Australia would be active in ensuring that these guidelines and these reviews are fully resourced and adhered to.

Finally, I will go onto vessels and platforms and other man-made structures at sea. Obviously, people are well aware of Greenpeace's activities with the Brent Spar in the North Sea. They would be aware that we oppose the dumping of oil and gas platforms.

**Mr ADAMS**—That was the Brent Spar, was it?

**Mr McRae**—The Brent Spar was an oil platform. It was going to be dumped.

**Mr ADAMS**—Was it a platform they used to store oil?

**Mr McRae**—Yes. Essentially, we are talking about stored oil or gas platforms.

**Mr ADAMS**—Where is it now?

**Mr McRae**—I believe it is in Norway somewhere. I have not got up-to-date information on that.

Also, I might bring to the joint committee's attention the fact that OSPAR, a North East Atlantic Commission concerned with ocean dumping, proposed a moratorium in 1995 on the dumping of oil and gas platforms. That has been enforced by a large number of countries which are in OSPAR, which is essentially European and UK countries, and we would encourage the Australian government to adopt a similar approach.

We believe that oil and gas platforms can be removed and the resources recovered. We find the excuses that have been put up in the past to be fairly devoid of any imaginative thinking or even any basic attempt to overcome the problem. Clearly, there are a number of initiatives which you can use for the removal of platforms and there are spin-off benefits, particularly for the onshore construction industry—

**ACTING CHAIR**—Although the treaty, as I understand it, permits the dumping of oil platforms, do you think the treaty should be signed because it does permit that, or do you think in any event—

**Mr McRae**—The Protocol should be signed because it is such a—

**ACTING CHAIR**—And we can work on these issues later on?

**Mr McRae**—Yes, and Australia should look seriously at—

**ACTING CHAIR**—We should work towards these at a later time?

**Mr McRae**—The whole thing about the Protocol is that it also covers waste minimisation and minimising discharges into the sea. It is not just an end of pipe solution where at the last minute you say, ‘We are going to dump it’ or ‘We’re not going to dump it.’ It is coming back from that and saying, ‘Hang on a minute, in five to 15 years we are going to have a serious problem with the dumping of platforms. Therefore, let’s look at bringing the stuff onshore. Let’s look at the recycling of the components.’

**ACTING CHAIR**—So your thrust is very much towards signature and ratification by March 1999, but flagging these things so that in the future we can improve the regime. Is that the thrust of where you are coming from?

**Mr McRae**—Absolutely. Obviously, we would like to see some sort of total removal strategy put in place by the Australian government in terms of removing oil and gas platforms, which will come into a waste minimisation approach, but this all comes under an oceans policy perspective, I suppose.

**ACTING CHAIR**—What would you prefer? You see, with what we have to address in our thinking, it is often better if you put our thoughts at ease and then I throw it back to you to tidy up. It is often more efficient to persuade us on matters which are concerning us, and then you can tidy up at the end of the day. Are you happy if we dive into questions and then I give each of you an opportunity to cover any bases that we may have missed?

**Ms Moore**—Indeed.

**ACTING CHAIR**—Do committee members have any questions?

**Senator ABETZ**—Are there any reasons that you would say we should not be signing this Convention or Protocol?

**Ms Moore**—No, absolutely none.

**Senator ABETZ**—What about definitions? Do you think it might be helpful to have some of these definitions tightened up before we ratify?

**Ms Moore**—Protocols and conventions are evolutionary processes, and I believe that we should not wait until we have got everything uniquely defined under the Protocol. We need to consider putting the signature on the Protocol and then working on the



definitions.

**Senator ABETZ**—Before ratification?

**Ms Moore**—It is subject to ratification, but WWF would like to see the Commonwealth actually sign and ratify this Protocol, because we believe it is a good instrument and it is worth putting in place. I noted your concerns about some of the definitions, but those are being worked on in a cooperative way globally.

**Senator ABETZ**—What would happen, for example, if sewage sludge were to be defined in such a way that it would not include raw sewage?

**Ms Moore**—I see it as the job of governments and NGOs to make sure that that actually does not happen. We will work very hard on that because, as an international organisation, we are very much involved in these fora and we will make sure that those sorts of things do not happen. I am sure Greenpeace is working flat out at the same time.

**Senator ABETZ**—I accept that. Thank you.

**Mr McRae**—We understand that there is no sewage sludge dumping anyway, so we do not see that that will be a problem for Australia.

**ACTING CHAIR**—We will now get into points you may want to cover.

**Ms Moore**—Apart from WWF welcoming the consultative approach by the Commonwealth and asking that you sign and ratify the Protocol as soon as possible, we would also ask the Commonwealth to vigorously pursue the states' agreement and cooperation. I do note that, in some of the pieces of legislation that have been introduced nationally, it has been very difficult sometimes to get the cooperation of states and bring them to the table and that, in fact, has been a very long-winded process.

We would like to see, particularly in view of the current developments and thrust of an Australian national oceans policy and also this Protocol, that it be pursued very vigorously indeed. Certainly, this is because, within the three-mile zone in the enclosed bays area, we need to know that the states are also doing the right thing in order not to provide an impediment to this particular Protocol and to a national oceans policy.

**ACTING CHAIR**—Ms Eiser, do you have any comments?

**Ms Eiser**—I do not have anything additional to say beyond reiterating our support for the signing of the Protocol and also emphasising the point that WWF have just made in terms of consultation with the states to ensure that there is compliance in practice across those areas.

**ACTING CHAIR**—They must do the right thing as well. Mr Horstman, what are your comments?

**Mr Horstman**—You have here two national and two international environment organisations urging the ratification and signing of this Protocol. ACF is certainly fully a part of that. The work that flows from signing these kinds of international conventions, too, is particularly important in that we develop legislation that recognises the true national and international interconnectedness of seas and coasts and marine environments, so that we do not end up with a situation where outside the state controlled waters we have a fairly good regime regarding dumping but within the three-mile limit that national effort is being undermined.

On a more general note, I would like to commend this kind of process of looking at international conventions and the implications of them. I would also like to flag with this committee that it would be a very useful process to be running national interest analyses on economic agreements of a multilateral nature, such as the World Trade Organisation, APEC and so forth.

ACF has been doing an amount of work analysing the policy position produced by Department of Foreign Affairs, Defence and Trade, attempting to define national interest and how that relates to the environment. We do have some concerns that, at that level of policy, environment is being excluded from our international deliberations. It would certainly be important to balance the kind of analysis that we are doing of environmental legislation, similarly with economic legislation.

**ACTING CHAIR**—Yes, I think the thrust was that you are saying that the national interest analysis should be broadened to include environmental considerations because we do, as Senator Abetz says, when we look at economic treaties and we do get national interest analyses but, if you have got something to say on how the criteria that should be adopted in what is or is not part of the national interest, then it might be worth putting a written submission in.

**Mr Horstman**—Certainly, I would be happy to provide that. The basic premise is that ecological sustainability, we would feel, is an important part of national interest. If our soils and waters and seas and atmosphere are no longer able to support our economic activity, clearly that is against the national interest.

**Ms Moore**—That is the other thing that we would like to do. All of us here would like to reserve our right to put in a written submission, because it gives us the opportunity to tap into a lot of our own organisation's expertise and actually put a lot more detail into it.

**ACTING CHAIR**—Certainly, I am sure that will be welcome. Thank you very much for coming along. I think some of you are staying around for the whaling treaty.

[10.32 a.m.]

**BRIDGEWATER, Dr Peter, International Whaling Commission Commissioner and Chief Science Advisor, Environment Australia, PO Box E305, Kingston, Australian Capital Territory 2604**

**KAY, Dr David, Assistant Secretary responsible for wildlife, Biodiversity Group, Environment Australia, GPO Box 636, Canberra, Australian Capital Territory 2601**

**THIELE, Ms Deborah, Senior Project Officer, Biodiversity Group, Environment Australia, GPO Box 636, Canberra, Australian Capital Territory 2601**

**ACTING CHAIR**—We have received your written submission. Would you like to make a brief presentation by going through some of your points?

**Dr Bridgewater**—I am a fast fading Australian Commissioner to the International Whaling Commission. To explain that somewhat odd comment, I am at the moment the Australian Commissioner to the International Whaling Commission, but that ceases on 31 December. I also chaired the last meeting of the International Whaling Commission, as I did the previous two meetings, having been elected to that position in 1995. My substantive position is now not in the area of the department that deals specifically with whaling matters. I am here not exactly under false pretences but to be able to add any information that I can. I would prefer that Dr David Kay, who was the effective Australian Commissioner while I was in the chair, made the presentation.

**ACTING CHAIR**—Certainly.

**Dr Kay**—Thank you. We are dealing with amendments that were made to the schedule to the International Convention for the Regulation of Whaling at the 49th meeting of the International Whaling Commission, held in Monaco in October.

There are four sets of amendments to the schedule. The first set deals with changes to paragraphs 11 and 12 and to a number of the tables. They are simple changes of date which reflect the continuation of the current moratorium on commercial whaling.

The other three deal with changes to paragraph 13(b) of the schedule which provides for quotas for aboriginal subsistence whaling. Those changes deal with stocks of the gray whale, the bowhead and minke whale off western Greenland. The changes to the bowhead quota are to extend that for a five-year period. The current schedule provides for a quota in the coming year, but not beyond that. This is to extend it essentially at 1996 levels for a further five years and to provide for a sharing of the catch of the quota between the Chukotka people of Siberia and the Inuit of Alaska.

The second provision dealing with gray whales is a reduction on previous quotas.

There had been a quota of 140 whales per year. That finished this year. That has dropped somewhat and there is a provision for that new quota to run for five years and to be shared between groups which have an approved—

**ACTING CHAIR**—So these quotas still apply to the aboriginal groups?

**Dr Kay**—They still apply to the aboriginal groups. The third aboriginal change related to the stock of minke taken by the Greenlanders, and that has increased by 10 whales per year for the next three years. I think that is all I need to say.

**Senator ABETZ**—Somewhere in my papers I was reading that the aboriginal groups will be allowed to take whales. Is there some restriction on the mechanisms by which they can take those whales?

**Dr Kay**—There are certain provisions within the Convention that deal with the types of technology that is permitted. That does not strictly apply to aboriginal hunts and the killing technology in aboriginal whaling has been under some scrutiny within the commission. Essentially, the US have been developing improved technology with the Inuit in Alaska—something called a penthrite bomb. That is the technology which is now being used in the Alaskan part of the hunt and it is being transferred to the aboriginal hunt in Russia. So, it is merely the acceptance of best available technology by those aboriginal groups. I think that sufficiently answers that.

**ACTING CHAIR**—All right. It does not quite. But if there is new technology, does that help kill whales more quickly and humanely and, therefore, should the aboriginal groups be able to use it? Isn't that part of the debate?

**Dr Kay**—Certainly that is part of the debate. Of the two aspects to the quota, one concerns a strike limit and how many whales are allowed to be shot or harpooned. There is a lower level quota which is how many are allowed to be landed. Inevitably with current technology some are struck and lost. The aim over recent years has been to reduce that margin. Essentially, the thinking is that every whale struck is probably a dead whale, so you should try and maximise the use and reduce the struck and lost rate. So the technology that is being introduced into Russia is certainly significantly more efficient and more humane than some of the technology that has been used there in recent years.

**Mr ADAMS**—Regarding the overall thrust of the Convention, and from reading reports, where do you think it is going? There seems to be a diversity of views holding it together. I value your opinion.

**Dr Kay**—Perhaps the chair of the commission can answer that one.

**Dr Bridgewater**—Past chair of the commission. It is almost a question in deep philosophy because there is now a very clear dichotomy of view. But it is not an even

dichotomy in the sense that those nations that are still whaling essentially are—other than for aboriginal subsistence which we have spoken about—Japan, which continues to engage in scientific whaling in both the Southern Ocean and the north Pacific Ocean under a specific article in the schedule which enables it so to do, and Norway, which engages in commercial whaling in the north Atlantic on the north-east Atlantic stock of minke whales under a reservation which it entered legally to the so-called moratorium, that is, the setting of zero catch quota. There are essentially those two nations which are clearly more interested in the aspect of developing the whaling industry side of the Convention than most of the rest of the nations who are far more interested in the conservation of whale stocks side of the paragraphs which establish what the Convention is supposed to do.

There are a number of other floating countries, if I can put it that way, who change position from time to time, sometimes with not very obvious reasons or not very obvious thought processes, but presumably they do know what they are doing. The one issue—

**Mr ADAMS**—Their national interest may be involved.

**Dr Bridgewater**—Sometimes, yes. Sometimes one suspects that they actually said no and they meant yes or vice versa. But the key issue at the moment is concerning the development of the revised management strategy which has caused a larger differentiation in the commission than any other previous issue. The majority of the commission previously were absolutely solid, and indeed still are, in terms of maintaining the moratorium against commercial whaling. However, it has been obvious over the last few years that rather more countries are interested in advancing what is called the revised management scheme, which is a set of Protocols around a scientific computer based model which evaluates population levels and would be used to set quotas. Australia, of course, has been always very firm that we are not interested in removing the moratorium, but at one stage we were involved, as were many other countries, in discussions on the revised management scheme. We are no longer formally involved in those discussions at all. We have made our position clear that Australia believes that to involve ourselves in those discussions would be to potentially advance the cause of whaling.

Other countries, particularly a number of European countries, appear to be taking a different view from that now and are obviously much more interested in participating in completing the RMS. But saying that does not mean necessarily that they would then vote to change paragraph 10(e), which sets zero quotas for all species, other than for aboriginal subsistence. There is an interesting dynamic in that sense with the whaling countries looking on and expecting, and indeed demanding, that the RMS be finished as soon as possible, because that would then enable them to commence whaling, if you like, despite the fact they are already doing it.

There are two scenarios which are often floated. One is that unless the whaling countries are somehow given the opportunity to go whaling, they will leave the commission which means the commission will then consist of a set of countries who are

ferently against whaling and the only countries who are whaling are doing it outside of the commission under some other international agreement which they would establish. One could give some credence to this, but there are a number of difficulties because the IWC is mentioned specifically in Agenda 21 as being the body concerned with the management of cetaceans and it would be difficult, but not impossible, for the whaling countries to leave the commission.

I myself am much more inclined to the view that there will be probably firmer discussions on the RMS over the next couple of years than we have previously had. I would not be at all surprised to see an RMS completed but I do not believe that will necessarily lead to the ending of the moratorium. The consequences for the whaling countries are then very difficult because they have, in a sense, a management scheme which is capable of being used but the majority of the commission is still not in favour of using it. Beyond that, it gets a bit dark and misty as to what would be likely to happen.

As an educated guess, I do not see the International Whaling Commission fragmenting, breaking up or dissolving this side of the next century. I know that is not many years, but at least it is a measure. I think, however, that if we get into the next century and they are not probably better satisfied—if I can put it that way—there may be another pause for thought.

To take another tack, one could argue—and, indeed, many can—that, in fact, the current situation suits both whaling countries admirably. Japan is able to continue its scientific whaling even though it gets strict motions passed year after year. It simply notes them and then issues its permit. So it is building up its research bank of information as well as providing meat for the domestic market. Norway is legally whaling although it does suffer odium as a result of that because that is regarded as illegal, even though it is technically legal.

But so far they really have not been inconvenienced. There is no shortage of whale meat in Norway if you wish to have it. In fact, one of the difficulties is that the Norwegians, unlike the Japanese, do not eat blubber and they have cold stores filled with blubber from the last few years of catches which they would like to export to Japan, which would like to have it. But that then moves us into the arena of another convention, CITES, and the nexus between the two—there is a potentially ripe field for argument as to which convention has the proper control of trade. I would frankly see more stress and strain in the CITES arena over the next couple of meetings of CITES than in the IWC, which I suspect will still continue along its somewhat peculiar but now formalised course. I am sorry; that was rather a long answer.

**ACTING CHAIR**—That is all right. Why are the Norwegians so keen on whaling? Obviously, they see it being to their economic advantage, but what other uses are there if the domestic market is not consuming whale meat?

**Dr Bridgewater**—It does.

**ACTING CHAIR**—But not blubber.

**Dr Bridgewater**—I do not know whether their genes are different from the rest of us! My parents vividly recall being force-fed whale meat as the only meat that they could have in Britain at the end of the war.

**Senator ABETZ**—What does it taste like?

**Dr Bridgewater**—They said it was ghastly, but that would have been deep-frozen meat from the Antarctic.

**ACTING CHAIR**—Is the meat separate from the blubber?

**Dr Bridgewater**—Yes. Of course, it has become an issue of national pride. Mrs Brundtland, when she was Prime Minister—despite being a very strong environmental crusader in many ways—was equally strong in terms of Norway's rights and privileges in carrying out its annual whale catch.

**Mr ADAMS**—It is part of their heritage, isn't it?

**Dr Bridgewater**—They do say it is part of their heritage and, yes, it goes back a fair way.

**Senator MURPHY**—They are still very keen on the hunting and fishing over there.

**Dr Bridgewater**—They have not got much else.

**Senator ABETZ**—One of your people, Shayne!

In relation to Japan, is the so-called scientific basis just a cover for them to be able to get a few whales and sell the meat on the local market? Or is it genuinely done for scientific purposes and we simply allow them then to sell the meat on the local market so it is not wasted? Are you satisfied that they are genuine?

**Dr Kay**—The Convention has some quirky provisions in that context in that there is a provision in article 8 which allows any country to issue permits for the take of whales for scientific purposes outside any of the other controls of the Convention. That provision also requires that whales taken in that way must to the extent possible be used for human consumption—that they not be wasted. The Japanese are applying the letter of the law. I do not think the provision was ever intended to cover takes of 550 or so which the Japanese have now started to get up to. From a scientific perspective, the Japanese

Antarctic program was reviewed quite thoroughly over the last 12 months or so. The report of that review was tabled at the meeting in October. As with many scientific reports, it is fairly carefully worded. It notes that some value has come from it, but not significant value.

**Senator ABETZ**—I suppose it begs the question: why don't the Norwegians pursue the scientific line as well?

**Dr Bridgewater**—They did.

**Senator ABETZ**—They did. Why not anymore?

**Dr Bridgewater**—Because they made the decisions that they had the reservation and they would simply go to commercial whaling. They stopped any pretence at scientific whaling. As far as the Norwegians are concerned, they believe they are operating on an estimate of population which means that, under their commercial take on an annual basis, there is no issue of conservation of the stock concerned. That is probably at a strict scientific level. I think that is probably correct. They do not need to undertake scientific research to establish their credentials.

The Japanese, however, say correctly that they are just over halfway through a 15-year research program which was carefully planned. It was. It has been through the scientific committee. It has been modified from time to time. But what Japan will not do is modify its program to use only non-lethal techniques. While it is true that some information they get could only be obtained by actually killing the animals, most of the information could be obtained by non-lethal techniques. That is a position which we, and most of the other members of the commission, have reiterated time and time again. They are putting forward that it is a good faith thing, but the question is: do you really need to engage in lethal research? The answer probably is no.

**Senator ABETZ**—I think it was you that said that Norway has a legal reservation. I just want to explore the technicalities of the Convention. Does that mean that there is a specific provision in the Convention that allows for that sort of reservation?

**Dr Bridgewater**—Yes. It is formally possible to enter a reservation against any of the provisions of the Convention, or any changes to the schedule, if the country concerned feels that it is likely to rebound. Norway has this reservation. The Russian federation—or its precursor, the USSR—has still extant a reservation. Japan did have, but Japan gave theirs up.

**ACTING CHAIR**—When you say 'rebound', do you mean to their economic detriment?

**Dr Bridgewater**—Yes. In other words, many conventions have the option for the



entry of a reservation by a country to a particular provision. While it would seem a bit peculiar for this to be the case in a convention that is really designed to regulate a natural resource, that is the case. Japan, of course, entered a reservation against the Southern Ocean sanctuary, but only for minke whales, which was an interesting way of dealing with it. That is irrelevant to their activities in terms of scientific whaling. It was a flag saying, 'We don't agree with the sanctuary as far as minke whales are concerned, because we reserve the right to go and harvest them commercially.' Frankly, I do not think they ever will, despite all this mass accumulation of data. I think they would actually like to find a way of withdrawing from what is a difficult scenario for them.

**ACTING CHAIR**—Is there any pressure from the international community for Norway to give up its reservation?

**Dr Bridgewater**—I think there is a certain amount of pressure.

**Dr Kay**—It is condemned annually in resolutions at the commission, but that does not seem to have had any significant impact to date.

**Dr Bridgewater**—I think the key in all of this is the—

**Senator ABETZ**—Norway does not have the Australian cringe.

**Dr Bridgewater**—No, it does not. It is the Viking blood, I guess. The US could play a really key role in this in that US legislation which would invoke trade sanctions could be triggered. But the US has not done so. As long as that happens, Norway can carry on at no cost.

**Ms JEANES**—Dr Bridgewater, how many other countries are interested in the revised management scheme because they want to undertake commercial whaling? Who are they? Who are Australia's most powerful allies against the practice of whaling? Have there been any discussions in your time at the IWC, either informally or formally, about using the sanctions you just spoke about, that the United States have, to get together with the allies and to use trade sanctions to apply pressure on Japan, Norway and any other countries considering taking up commercial whaling legally?

**Dr Bridgewater**—Can I just deal with that last one first? Are you saying trade sanctions from Australia's viewpoint?

**Ms JEANES**—Australia being involved perhaps in a bloc of trade sanctions. Have there been any discussions?

**Dr Bridgewater**—I am not aware that an issue there has been talked about.

**Dr Kay**—Australian government policy is not to impose those sorts of unilateral

trade sanctions for environmental reasons. This has been going on throughout the whole of the process of the GATT negotiations, the Uruguay Round, et cetera. Australia's position has always been a free trade one. To impose trade sanctions for this sort of issue runs counter to Australian policy in those fora.

**Mr ADAMS**—When they move to stop us trout fishing, we will have some more problems.

**Dr Bridgewater**—It is potentially a very difficult area. To answer your other questions, I do not believe there are any other countries. There is not a whole fleet of countries waiting to set sail because, apart from anything else, most of the world's whaling fleet has now rusted away.

I do not think that is an issue which has any currency. Norway is not interested in expanding. Iceland, which was and is no longer a member, may well seek to return to the IWC if a revised management strategy is put in place. The problem with that scenario is that the population of Iceland, being slightly smaller than that of Canberra, cannot consume a very large amount of whale meat, however much they like it. Again, that depends on the CITES issue. There really is not a queue of countries, which is not to say that that will not happen over the next 100 years or so.

**ACTING CHAIR**—World public opinion on the whole would be against whaling. Do you think it has had an effect on it?

**Dr Bridgewater**—I do not think any public opinion favours the killing of whales for food or for anything else. But it is odd that a country like Norway, which otherwise does have a very green approach to life, has this one very firm thing. Our closest ally is probably just across the Tasman. Our other allies include some of the European countries like the UK, Spain, France. The US is an ally, but one has to treat the US with caution. They are a whaling nation in that they do have indigenous whaling issues. Every time that those issues are discussed, the steel in the spine of the US is a bit more flexible, if I could put it that way. Those would be the key countries.

There is a larger coalition of countries who are generally in sympathy with the idea that there should not be any whaling. Certainly, at this last meeting it was noticeable that a number of the European countries that had previously been very like-minded were clearly moving away from that position. These include countries like Sweden and Germany, which is a little bit more ambivalent. The Netherlands is a little bit more ambivalent.

If it came to a situation where the result of actions was going to suddenly appear to open up whaling as a major new issue again, I think you would find that all of those countries would close ranks and be very solid. This issue at the moment was given some prominence by the proposal from Ireland to try and look at a number of possible changes

which, in effect, would regularise what is already going on, if I can put it crudely. That is what the Irish proposals are aimed at doing. There was clearly a degree of interest in those proposals.

**Ms JEANES**—Regularise what is clearly going on where?

**Dr Bridgewater**—If you have a revised management scheme established, it would be possible for Norway to formally seek a quota, under a revised management scheme, from the North Atlantic minke stock. In other words, it then could do—

**Mr ADAMS**—Sustainable fishing?

**Dr Bridgewater**—It is doing what it is doing legally, but it knows it is doing it under a reservation, which means that there is a degree of duress in it. I think it would in part like to be able to do what it is doing fully in conformity with the rules of—

**Ms JEANES**—So it is only Norway that we are talking about?

**Dr Bridgewater**—Japan also may wish to take advantage of a revised management scheme in terms of actually applying for a quota for some of its so-called stressed villages in northern Japan, which it claims have suffered considerable hardship as a result of the moratorium in that they cannot legally catch whales. These are not the same people that are doing the whaling in the Antarctic.

**Mr ADAMS**—How much truth is in that? Are those islanders traditional whalers?

**Dr Bridgewater**—They would have as much tradition as Norway would in terms of taking whales over a reasonably long period. It is difficult, but one also has to be careful about being insensitive to the suggestion that it is causing economic stress.

**Mr ADAMS**—There are other countries that whale that are not in the commission, like Iceland. What other countries are there?

**Dr Bridgewater**—Iceland no longer whales. Iceland walked away from the IWC but said, ‘Okay, we understand the IWC is the whaling body. We are not going to whale.’ They have stuck by that. The trouble is that their cold stores are just about empty now and I think that is why there is some interest in them rejoining.

**Mr ADAMS**—Okay. Of course, these countries are traditional whalers, aren’t they? They have been whaling since people have been there basically, haven’t they?

**Dr Bridgewater**—There has certainly been coastal whaling in some of these countries—

**Mr ADAMS**—In Norway there must have been whaling in the fiords for centuries and centuries.

**Dr Bridgewater**—In the where?

**Mr ADAMS**—When they come into the coastal areas.

**Dr Bridgewater**—Yes. I think they claim their tradition goes back some 700 or 800 years. It is traceable, anyway, back 700 or 800 years. The conditions in many of the Scandinavian countries have meant that they were some of the countries who were the foremost whaling nations in the height of the industrial whaling, as were the UK, the US and so on.

**Mr ADAMS**—The figures that are showing up in the RMS are that there is an increase in all stocks across the world?

**Dr Bridgewater**—Most stocks are showing some degree of recovery. Maybe it would be useful to provide the actual figures for all the stocks, as discussed by the scientific committee to the commission in its last meeting. That would probably be the most helpful, rather than trying to produce educated guesses.

**Mr ADAMS**—Thank you.

**ACTING CHAIR**—We are talking about an increase from virtual extinction level to—

**Dr Bridgewater**—Certainly from commercial extinction, yes. The blue whale is still seriously endangered—there is no doubt about that.

**Senator ABETZ**—I noticed that with some of the amendments there is mention made of taking of calves or mothers with calves. What is the definition of calves? How old do they have to be? Are they calves for life or is it when it is obvious that they are no longer dependent on their mother for survival that they are no longer calves? Has any thought or definition been given to that or not?

**Dr Kay**—I think it is if the mother is accompanied by the calf.

**Senator ABETZ**—Yes, if it is accompanied.

**Dr Kay**—It is actually a prohibition in the schedule on taking calves or mothers accompanying calves. If they are independent, then that changes the situation.

**Senator ABETZ**—Fine. Thank you.

**ACTING CHAIR**—Thanks very much for your evidence.

[11.06 a.m.]

**BOYD, Ms Denise, Campaigner, Greenpeace Australia, GPO Box 3307, Sydney, New South Wales**

**EISER, Ms Pamela Joy, Member, Australian Marine Conservation Society, PO Box 3139, Yeronga, Queensland**

**MOORE, Ms Margaret Ann, Senior Conservation Officer, World Wide Fund for Nature, 21 Church Street, Hawthorn, Victoria**

**ACTING CHAIR**—I now recall as witnesses the representatives of Project Jonah and the World Wide Fund for Nature, and also welcome a representative of Greenpeace Australia. Do you have any comments to make on the capacity in which you appear?

**Ms Eiser**—I am representing Project Jonah, of which I am a committee member. I am also speaking here on behalf of the Australian Marine Conservation Society, the Australian Conservation Foundation and Whales Alive Australia.

**ACTING CHAIR**—Thanks. Do you have one statement, or do you each wish to make some comments?

**Ms Eiser**—I am going to make a primary statement. It was my understanding that you did want to look at some of the broader issues of the International Whaling Commission and not just restrict it to the particular schedule amendments, so I was planning to go into broader areas.

**ACTING CHAIR**—Okay.

**Ms Eiser**—The organisations that I represent are opposed to commercial whaling. We see it as an outdated anachronism. This view is based on a number of considerations: moral, ethical, conservation, scientific and management. It reflects a view about whaling that is widely held, we believe, by the majority of Australian people.

Our attitude to commercial whaling is reflected in the policy of successive Australian governments to seek to achieve a permanent worldwide ban on commercial whaling. We supported the establishment last year of the national task force on whaling and particularly welcomed the announcement by Senator Hill, on behalf of the Australian government, just prior to the commencement of the 1997 International Whaling Commission meeting, of the adoption of a strategy to achieve a permanent ban on commercial whaling. This initiative has our full support, and we urge its continuing implementation.

Whilst opposed to commercial whaling, our organisations do not oppose aboriginal

subsistence whaling where it meets strict criteria and does not impede the recovery of endangered whale populations. The problem, however, is that aboriginal subsistence whaling is poorly defined, and criteria to be met are not clearly set out in the schedule to the Convention. This can have the potential to undermine any ban on commercial whaling.

At IWC 49, the most recent meeting, we were concerned at the lack of information provided, particularly by Denmark, to support increased aboriginal subsistence quotas. Whilst welcoming the reduction in the grey whale quota, we would like to see this reduced even further, given that the quota is currently substantially under-utilised. We do not agree with the US interpretation that the IWC had recognised the cultural and subsistence needs of the Makah tribe. This is in relation to grey whales also. We also are concerned at the change in the bowhead quota to remove the reference to landed whales, as this potentially allows for an increase in whales killed.

We would recommend that Australia not oppose the proposed schedule amendments for aboriginal subsistence whaling; that Australia seek a review of these quotas at IWC 50; and that, at IWC 50, Australia seeks to have the following criteria for aboriginal subsistence whaling clearly set out in the schedule. Firstly, it must be necessary for both cultural and nutritional needs; secondly, there must be a continuing history of such whaling by the indigenous peoples concerned; and, thirdly, it must be carried out by the aboriginal people in question and not by others on their behalf.

Returning to the broader issues of whaling, we believe that a two-pronged approach is needed, both within the International Whaling Commission and outside of it. With respect to the IWC, we support it as the most appropriate body through which to work to achieve a worldwide ban on whaling. Our support, however, is conditional in that we do not accord a higher priority to the maintenance of the IWC than to the maintenance of the moratorium and the instituting of a ban on whaling. That said, it is nevertheless our view that the IWC is more robust than some would suggest and that the probability of Japan, in particular, walking out is low.

As a major strategy for achieving a ban on whaling, we urge the adoption of a global whale sanctuary encompassing all waters, including EEZs and territorial seas. In the meantime, the current moratorium on commercial whaling must be maintained. The issues of special permit whaling and commercial whaling under objection must be addressed within the commission and the loopholes closed off.

We would suggest that what we are looking at is a three- to five-year strategy. At this year's IWC meeting, Ireland outlined five proposals for consideration by member states, stating that it hoped they might form the basis of discussions leading to a consensus in the commission, thus breaking what it sees as the present deadlock between pro-whaling countries and anti-whaling countries. Aboriginal subsistence whaling was not one of the issues included. The Irish proposal did, in many ways, dominate the meeting and has to some extent taken the initiative away from the Australian proposals. However, there was

no formal debate of the Irish proposal, and no specific texts were put forward, thus making considered responses difficult.

We would nevertheless reject any package of measures that included the resumption of commercial whaling, whether it be in coastal waters or on the high seas. In particular, we find unconscionable a proposal that has the effect of rewarding those countries that have exploited loopholes in the Convention to continue what can only be commercial whaling during the period of a moratorium.

One of the most critical issues in successfully achieving a permanent worldwide ban on commercial whaling will be in ensuring that the resources needed to implement the strategies already developed are provided in a timely manner and that adequate priority is given to this goal. Coordinated actions are needed now at the political level, the diplomatic level, the bureaucratic level, and with NGOs. The first step for Australia must be to develop a core group of like-minded countries, all dedicated to achieving the same goals.

**ACTING CHAIR**—Thanks very much. Ms Boyd, would you like to add anything?

**Ms Boyd**—I will just make a very short addition to some of Ms Eiser's statements. Greenpeace Australia is very encouraged by the continued strong position of the Australian government in opposition to commercial whaling. However, we are rather disappointed at the current lack of action to prevent what is effectively a commercial take of whales in the Southern Ocean sanctuary. We would like to see some strong initiatives from Australia and like-minded countries in order to bring this loophole to a final conclusion and to end whaling in the Southern Ocean sanctuary, and to treat it as a Southern Ocean sanctuary.

**ACTING CHAIR**—That is the Japanese so-called 'scientific' whaling, is it?

**Ms Boyd**—Yes: the Japanese scientific whaling program, which is effectively a commercial hunt.

**ACTING CHAIR**—Yes. Ms Moore?

**Ms Moore**—On behalf of WWF, I would like to just say that we support the continuation of the moratorium. We certainly support the IWC, and we are working constantly to strengthen its conservation directions and to close off some of those scientific loopholes through which Japan does go down into the Southern Ocean sanctuary to whale. Also, we want to try and do something about whaling on objection, which Norway uses.

**ACTING CHAIR**—Can you explain the term 'whaling on objection'?



**Ms Moore**—Norway is objecting to the moratorium and basically still doing its whaling anyway. We want to see no international trade in whale meat or tradeable rights. So if we are looking at, say, aboriginal and subsistence whaling, we do not want to see any tradeable rights introduced into that whereby other whaling countries can take advantage of that and use it. DNA testing has proven that endangered species are being caught and we are very concerned about that because they are listed species.

WWF supports the implementation of a globalised oceans sanctuary and we are continuing to achieve, or trying to achieve, a strong precautionary RMS. WWF sees this as an insurance policy, I suppose you could say, to prevent endangered species being taken and to control any whaling that might occur.

We do not oppose aboriginal subsistence whaling in principle, but it must be clearly defined and a transparent process put in place.

**ACTING CHAIR**—Is the position of both the WWF and Greenpeace not only to support these amendments to the schedules but also to advance your arguments in terms of the future direction?

**Ms Moore**—Yes.

**Ms Boyd**—Yes.

**Ms JEANES**—Ms Eiser, in terms of the current amendments, I think you said that, at IWC 50, you would like to see a tightening up of the conditions for aboriginal whaling. For culture and subsistence reasons, it was necessary for it to be an ongoing practice and the whaling had to be carried out by aboriginal people themselves. Is your difference the only difference from the amendments that currently allow for aboriginal people, or a contracting party, to undertake the whaling? Could you tease out your difference for me, please?

**Ms Eiser**—As we would see it, there are two different issues really—firstly, the current amendments that came out at the last meeting, that the needs of those people have been accepted. But yes, what I mentioned specifically—that question of it being taken by a contracting party on behalf of the aboriginal peoples—is one of those differences that we would like to see removed.

Our particular reason for talking about the tightening of this provision has much to do with closing any potential loophole that may exist where the water gets muddied between what is aboriginal subsistence whaling and what is commercial whaling. You are already seeing that trend emerging. For example, the distinction between the needs of the Makah Indian, or the case that was put for the Makah Indian, and those of the Japanese coastal communities is fairly blurred. What we do not want to do is to say that commercial whaling is banned and, at the same time, have a number of people coming

through another mechanism and saying, 'Oh, yes, but it will be aboriginal subsistence whaling.'

There has also been discussion over the years of perhaps a third category of whaling. You can give it any name that you want but it would fall somewhere between aboriginal subsistence whaling and commercial whaling. What we are basically proposing is that there should be two categories of whaling only: aboriginal subsistence whaling, as we have tightly defined it—and anything that does not fall within that category then becomes commercial whaling. So the effect of what we have said would not necessarily impinge so much on those quotas that are presently given, but it would make the whole situation for the future much clearer in terms of what is actually aboriginal subsistence.

**Ms JEANES**—There was some discussion before about improved technology for aboriginal whaling. When does that improved technology, I suppose, depart from the practice? When does it become no longer a traditional practice?

**Ms Eiser**—It is an issue that has needed to be grappled with. At least from the view of the organisations that I am involved with, if the whale is to be killed, then we would like to see it killed in the most humane way possible. So from our perspective, we would encourage the improvement in technology in order to ensure what I can only describe as the swiftest death possible for that whale. It does certainly take it away from a traditional method of killing. If you go back to many of the aboriginal people, they used fairly primitive methods. But in most cases the continuation of those traditional methods has not been seen as central to the continuation of the tradition of whaling. It is the taking of the whale that has as much significance as the actual methodology that is used to do it.

**ACTING CHAIR**—I think that in that context one of the previous witnesses said that he did not want a whale being struck by a harpoon and then left to die without being caught. Your view is consistent with that, if it is going to be done.

**Ms Eiser**—Yes. Or a whale being struck by many harpoons over many hours, and more than likely that would be the result if you went back to some of those very traditional methods.

**Senator ABETZ**—I suppose the difficulty is that the new methods would be more expensive in as much as they have got to buy equipment. And then to pay for that equipment they are no longer in the subsistence type economy that you are talking about because they must make some money from somewhere to be able to buy those mechanisms to undertake the whaling in a more humane manner. I suppose that is where you then have the clash of the cultures and the way that things are done.

**Ms Boyd**—Yes, it is one of the many reasons. I suppose that aboriginal subsistence whaling is a very complex issue, which is why Greenpeace internationally has always taken the position that while we are not actively opposed to aboriginal subsistence

whaling, we do not support any whaling at all anywhere.

**Mr ADAMS**—What do you mean? It is two bob each way, isn't it?

**Ms Boyd**—No, not at all.

**Mr ADAMS**—So, you do not support any whaling, but you support aboriginal—

**Ms Boyd**—No, not at all.

**Senator ABETZ**—No. I think Ms Boyd said the opposite: that Greenpeace does not support any whaling and that means no whaling for aboriginal groups either. Is that what you said?

**Ms Boyd**—Greenpeace has always taken the position that while it will not actively oppose aboriginal subsistence whaling, it does not support any whaling.

**Mr ADAMS**—All right. Sorry, I misunderstood you.

**ACTING CHAIR**—Any other questions?

**Mr ADAMS**—This is a very complex situation, very difficult to get solutions to. Do I take it that WWF does not support any trade in whaling from aboriginal—

**Ms Moore**—We do not want to see the commercial trade opened or developed, or the pushing of the agenda within IWC, or anywhere else for that matter.

**Mr ADAMS**—Okay. That is where the CITES becomes very important and we get this issue that Senator Abetz just touched on it. It is not a totally primitive way that some of these groups now fish, but it is more of a traditional issue as I understand it and as it has been stated.

**Ms Eiser**—Could I make a clarification? There is no international trade, nor is it permitted in aboriginal subsistence whaling. In fact, some proposals have basically been rejected on the basis of commerciality. Any international trade, in particular, is not permitted.

**Senator ABETZ**—Yes, but the aboriginal communities would be allowed to sell within, let us say, the broader United States situation, or the broader Alaskan market, to pay for the new technology?

**Ms Eiser**—I think that it is a fairly narrow 'broad market' that you are talking about. The general restriction is that you are looking within the local communities only.

**ACTING CHAIR**—Literally for their own subsistence.

**Ms Eiser**—Or with some trade within their sorts of communities, but not in a more open market situation. On the issue of payment, or who pays for the technology, I may be corrected, but my understanding is that in a lot of instances this is very much a cooperative exercise between the government concerned and the people so that the impost is not completely on those indigenous peoples to pay for this new technology. For example, the US government has established an Alaskan Eskimo whaling commission, and it works very closely with them in the development of this technology.

**Ms JEANES**—Ms Boyd, do I read you correctly in that you are critical of the government's lack of action in regard to eliminating all whaling? What other strategies does Greenpeace suggest that the government move on?

**Senator ABETZ**—Something to add to the Prime Minister's brief!

**Ms Boyd**—I do not think that would somehow stop the Japanese from whaling in the Southern Ocean. The Southern Ocean has been declared a sanctuary for whales. However, the international community has failed so far to take any firm action in terms of requiring Japan to fall into line with the moratorium on whaling, particularly in the Southern Ocean sanctuary. This is of concern now that there is a proposal for a global whale sanctuary. While Greenpeace supports a proposal for a global whale sanctuary, the fact that the international community has failed to prevent whaling in the Southern Ocean within this sanctuary begs the question as to how this will work at a global level.

For example, the Japanese whaling fleet is presently on its way to the Southern Ocean and will begin its scientific hunt, or its commercial hunt, in the next couple of weeks. There is a resupply vessel which assists the Japanese whaling fleet in order to allow the fleet to stay in the Southern Ocean. That resupply vessel has been known to visit Australian ports. Greenpeace would be curious to know why this vessel is allowed to enter Australian ports in order to enable this fleet to continue its commercial hunt.

**Ms JEANES**—Apart from not allowing vessels to dock in Australia, what else does Greenpeace suggest?

**Ms Boyd**—Australia, in association with other like-minded countries, should look at other methods of encouraging Japan to respect the moratorium on commercial whaling and also respect the Southern Ocean sanctuary. There would be a number of options open to the Australian government, such as looking at trade sanctions.

**Ms JEANES**—And that is it?

**Ms Boyd**—That is one of the options. That is something that Australia and like-minded countries should really discuss. If Australia and those like-minded countries are

firm in their resolution to end commercial whaling and to respect the Southern Ocean sanctuary, then those countries should discuss the options to bring an end to whaling in the area.

**Mr ADAMS**—What has Greenpeace got planned to help change the political position in Japan so that the people in Japan take responsibility for their government allowing their fishermen to take whales in scientific activity?

**Ms Boyd**—Do you mean what is the Greenpeace organisation doing within Japan?

**Mr ADAMS**—Yes.

**Ms Boyd**—Greenpeace Japan is part of the Greenpeace international organisation and, as such, supports that position and will be presenting that position to the Japanese people and to their government. Greenpeace Japan does not have a different position.

**Mr ADAMS**—No, but I believe that this issue could be resolved by the domestic situation in Japan. If the Japanese people say they do not want their country to be whaling, just like Australians, then their government would act accordingly. I believe the majority of Australians would not want Australia to go back to the old ways and they would support our position internationally. How do you educate the Japanese people to have a similar view?

**Ms Boyd**—That is an issue for the Greenpeace organisation within Japan to resolve, given that there is a very different culture operating in Japan. I, as a representative of Greenpeace Australia, would not presume to say how Greenpeace Japan would go about that process.

**ACTING CHAIR**—As there are no other questions, thanks very much for coming along.

Resolved (on motion by Mr Adams):

That this committee authorises publication of the evidence given before it at public hearing this day.

**Committee adjourned at 11.29 a.m.**